

Freedom of Information Act 2000 (Section 51)

Information notice

Date: 17 March 2021

Public Authority: Chief Constable of Sussex Police
Address: Sussex Police Headquarters
Malling House
Church Lane
Lewes
East Sussex
BN7 2DZ

Section 51

Under section 51 of the Freedom of Information Act 2000 (the "Act"), which is set out below, the Information Commissioner (the "Commissioner") has the power to serve a notice on a public authority requiring it to furnish her with any information she requires to enforce the requirements of the Act.

51. – (1) If the Commissioner –

(a) has received an application under section 50, ...

she may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Application under section 50

1. The Commissioner has received an application under section 50, reference IC-50083-W6J7, for a decision whether a request for information made by the complainant to Sussex Police on 7 August 2019, has been dealt with in accordance with the requirements of Part I of the Act.

Nature of complaint

2. On 7 August 2019, the complainant made the following request for information under the Act:

"Please provide the following information under the Freedom of Information Act 2000:

- 1. Please state precisely under what law jamming equipment was approved to be used at Gatwick Airport in December 2018.*
- 2. Please state which authority made the application to use jamming equipment at Gatwick Airport.*
- 3. What considerations did Sussex Police make under the Wireless Telegraphy Act 2006 in respect of Gatwick Airport and being permitted to use jamming equipment?*
- 4. Did you liaise with OFCOM in respect of providing and/or using jamming equipment?*
- 5. Did you liaise with the Ministry of Defence in respect of providing and/or using jamming equipment?*
- 6. What information do you have about me for me to be a person of interest in relation to the events at Gatwick Airport?*
- 7. Who provided information about me for me to be a person of interest in relation to the events at Gatwick Airport?*
- 8. What evidence do you have that states that a drone was seen not including drone sighting reports that relate to your own drones?*
- 9. What equipment was used to detect drones?*
- 10. How many drones does Sussex Police have, and state make and model?*
- 11. Has Sussex Police used jamming equipment against drones? If so, please state what make and model?*
- 12. Has Sussex Police used drone detection equipment? IF so, please state make and model.*
- 13. How many drone operators are police officers employed by Sussex Police?*
- 14. How many drone operators does Sussex Police use that are civilian?"*

3. Sussex Police acknowledged the request on 8 August 2019.
4. On 4 September 2019, Sussex Police advised the complainant that it would need to extend the time taken to respond as it needed to conduct a public interest test.
5. As Sussex Police subsequently failed to respond to the request, on 7 January 2020, the Commissioner issued a decision notice (FS50884608) requiring it to provide a response.
6. On 30 June 2020, Sussex Police responded. It refused to provide the requested information. It cited the following exemptions of the FOIA as its basis for doing so: sections 31(1)(a)(b)(c) (Law enforcement), section 24(1) (National security) and section 40(1) (Personal information).
7. The complainant requested an internal review on 13 July 2020.
8. On 11 August 2020, the complainant wrote to the Commissioner to advise that his internal review remained outstanding; despite the Commissioner's intervention, this remains outstanding.
9. On 28 January 2021, the Commissioner wrote to Sussex Police raising various queries to assist with her investigation. She received an acknowledgement on the same day but, at the time of writing this notice, no further response has been received.

Information required

10. In view of the matters described above the Commissioner hereby gives notice that in the exercise of her powers under section 51 of the Act she requires that Sussex Police shall, within 30 calendar days of the date of this notice, furnish the Commissioner with a copy of the following information.
11. Sussex Police is required to respond to the email which the Commissioner sent to it on 28 January 2021, namely:

"Background

If you are aware of any background to this request please will you provide it. Please also advise whether or not this is suitable for inclusion in our decision notice.

Withheld information

Please provide a copy of the withheld information under consideration, clearly marked to show where each exemption cited has been applied.

Section 24 – national security

Please provide a detailed explanation to support Sussex Police's position that withholding this information is required in order to safeguard national security.

In providing this explanation please be aware that ICO interprets 'required' in the context of section 24 to mean reasonably necessary and therefore this sets a high threshold which has to be met in order for this exemption to be engaged. Consequently, it is not sufficient for the requested information simply to relate to issues of national security, rather there must be evidence of specific and real threats to national security which would occur if the requested information was disclosed.

Please add any further public interest arguments that you would like to rely on.

Section 31 – law enforcement

You have cited sections 31(1)(a), (b) and (c).

Please clearly explain why disclosure of the information would, or be likely to, prejudice each of the functions which these sub-sections are designed to protect.

Please ensure that you provide evidence which demonstrates a clear link between disclosure of the information that has actually been requested and any prejudice which may occur.

Please clarify the level of likelihood being relied on, i.e. 'would' or 'would be likely to' prejudice.

Please add any further public interest arguments that you would like to rely on.

Section 40 – personal information

This appears to have been cited in respect of parts 6 and 7 of the request. As this is clearly an approach by the complainant for his personal information I have no specific questions. However, it would be helpful if you could confirm whether or not this has now been dealt with as a subject access request.

I strongly recommend that your response is guided by recent decision notices, our guidance and our lines to take, which demonstrate our approach to the exemptions and procedural sections of the FOIA. These can be found on our website.

Having revisited the request, you may decide to apply a new exemption. We will consider new exemptions but it is your responsibility to tell the complainant why the new exemption applies and to provide me now with your full submissions.

For the avoidance of doubt, you should now do the following.

- *Consider whether to change your response to the information request, and let us know the outcome.*
- *Send us the withheld information.*
- *Send us your full and final arguments as to why you think the exemptions apply.*
- *Answer all of the questions in this letter”.*

Failure to comply

12. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act, and may be dealt with as a contempt of court.

Right of appeal

13. There is a right of appeal against this information notice to the First-tier Tribunal (Information Rights). Information about the appeals process can be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: grc@Justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

14. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this information notice is sent. If Notice of Appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

Signed

Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF